IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1858

MARIA ALANIZ, ET AL.,
Plaintiffs-Respondents,

VS.

TILLIE LEWIS FOODS, ET AL.,
Defendants-Respondents,

VS.

ROBERT BEAVER, ET AL.,
Applicants-Petitioners.

Brief In Opposition To PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Ninth Circuit

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I

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit opinion herein is reported at 572 F.2d 657 (9th Cir. 1977). The three opinions of the United States District Court for the Northern District of California are reported at 73 F.R.D. 269 (May 5, 1976), 13 FEP Cases 738 (July 22, 1976) and 73 F.R.D. 289 (November 11, 1976).

These opinions are appendices to the Petition for Certiorari.

II

JURISDICTION

Petitioners invoke this Court's jurisdiction under 28 U.S.C. §1254(1). Plaintiffs-Respondents do not contest jurisdiction.

III

QUESTIONS PRESENTED

1. Did the District Court abuse its discretion in ruling that the Petitioners' Motion to Intervene was untimely?

2. Did the District Court's denial

of Petitioners' Motion to Intervene deprive them of due process of law?

3. Did the District Court abuse its discretion by denying Petitioners' Motion for Relief from Judgment under Federal Rules of Civil Procedure 60 (b) (5) and (b) (6)?

IV

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions Petitioners rely upon are set forth in Section IV of their Petition. Plaintiffs-Respondents agree that these provisions are relevant to the issues raised by Petitioners.

V

STATEMENT OF THE CASE

A. THE PROCEDURES BEFORE THE DISTRICT COURT.

This is an employment discrimination action class action involving the cannery industry located in Northern California. The Plaintiffs are workers in the industry. The Defendants are the individual

canneries and their collective bargaining agent, California Processors, Inc. (hereinafter "C.P.I."); 13 local Teamsters unions representing cannery workers and their collective bargaining agent, California State Council of Cannery and Food Processing Unions (hereinafter "Council") (C.T. 1).

After filing of the lawsuit, the parties and the Equal Employment Opportunity Commission engaged in extended negotiations which resulted in the signing of a Conciliation and Settlement Agreement on February 19, 1975. Plaintiffs held public informational meetings throughout Northern California. A group of dissident class-members held meetings as well. Newspaper coverage of the impending Agreement was widespread. (C.T. 141, 142). (C.T. 1109).

Prior to the approval hearing to be held by the District Court, dissenting class members moved to intervene (hereinafter "pre-decree intervenors"). (C.T. 201, 979). These pre-decree intervenors were from many of the geographical areas

of the industry, including Sacramento, San Jose, Hayward and Antioch, California. The District Court held their motion in abeyance. The Court ordered the parties to proceed pursuant to §1.46, Manual for Complex Litigation. The District Court, after submission of voluminous evidence by both parties and the pre-decree intervenors, tentatively approved the Agreement, ordered notice to the class, and ordered an evidentiary-fairness hearing (C.T. 544).

Over 150,000 bilingual copies of the notice were subsequently sent to class members throughout Northern California. The notice was published in newspapers in each of the counties where canneries were located (C.T. 962, 976, 981) and posted at the canneries themselves (C.T. 900 unreproducible document). Public meetings to discuss the proposed decree were sponsored and held by the Plaintiffs during the months prior to the evidentiary hearing.

The evidentiary hearing ordered by the District Court commenced on February 23, 1976. It continued for six (6) days.

Pre-decree intervenors participated fully in this hearing inlcuding cross examination and presentation of evidence. The District Court appointed its own experts to assist in determining the fairness of the Agreement. During this process, the Agreement was changed to reflect the District Court's concerns. The Agreement's seniority system was one of the most important issues litigated. On March 15, 1976, the District Court approved the Agreement (C.T. 1050). It became a Consent Decree and judgment settling the lawsuit. Pre-decree intervenors were then formally denied intervention (C.T. 1050). The Court's opinion was issued on May 5, 1976.

After Judgment and after the Decree went into effect, Petitioners herein, on July 2, 1976, moved to intervene, complaining principally about the Decree's seniority provisions (C.T. 1073). On July 6, 1976, Defendants, who were engaged in collective bargaining at that time, moved the court to interpret certain of the Decree's seniority provisions (C.T.

1051). The Plaintiffs opposed the proffered interpretation (C.T. 1115). The District Court took the proposed interpretations under submission (R.T. Vol. IX, p. 13). At the same time, the Defendants, as part of the collective bargaining process, modified the seniority provisions of the Collective Bargaining Agreement (C.T. 1056).

On September 22, 1976, the parties stipulated that the Decree could be modified to reflect the bargained-for changes in the Collective Bargaining Agreement (C.T. 1273). The Court approved the Decree's modification. The District Court denied Petitioners' intervention because of their untimeliness (C.T. 1323). Petitioners appealed this denial of intervention (C.T. 1324).

The Court of Appeals ruled that the District Court did not abuse its discretion in denying the intervention as untimely. It found that when intervention is requested after judgment and the parties to the action are prejudiced thereby, proposed intervenors must explain

their delay. The Court held this explanation to be particularly necessary when proposed intervenors seek to relitigate issues.

B. THE PROVISIONS OF THE CONSENT DECREE.

The Consent Decree entered in this case was designed to eliminate discriminatory policies in the Northern California Cannery industry and to compensate past victims of discrimination. One of the principal features contained in the Decree was the creation of a training program that would allow women and minorities to move into the higher bracket, higher paying jobs. This training program, over the last two years, has substantially increased the number of class members in highly skilled jobs. Its continuation will result in a large number of trained women mechanics (Appendix to Petition p. 29).

Combined with the training program, is a new job assignment system whereby class members receive every other job assignment until the Decree's goals are

met (Appendix to Petition p. 29). Minorities have reached the goals in many canneries. Women have not.

Because of the seasonal nature of the industry, workers are called back from layoff in the spring or early summer. Jobs in the canneries are initially assigned in accordance with qualifications and seniority. During the Decree's first months, the industry's seniority lists were modified so that each worker's position on the list reflected the date when the worker first achieved seniority. Prior to the Decree, the seniority lists reflected the canneries' long discriminatory history which included separate seniority lists for men and women. Petitioners complain that these changes, negotiated through the collective bargaining process and ultimately incorporated in the Decree, are not sound nor legal.

The Decree also provides for: 1. a claims procedure before a Special Master, which, now in operation, is compensating past victims of discrimination (Appendix

to the Petition p. 33); 2. special fringe-benefit credits for class members (C.T. 1284); 3. goals and timetables to increase class member participation in local unions, and 4. creation of a special Affirmative Action Office to oversee the Decree and to assist with the training programs (Appendix to the Petition p. 34).

The Consent Decree has been functioning for two years. Class members have made demonstrable strides, particularly women.

Petitioners have greatly exaggerated the alleged dislocation of non-class members. Class members are moving up through the ranks under a neutral, fair, and collectively-bargained-for seniority system. As the Ninth Circuit said in its opinion:

> To countermand it [the Decree] now would create havoc and postpone the needed relief.

VI
ARGUMENT

A. INTRODUCTION

Plaintiffs-Respondents oppose the granting of Certiorari herein because there is no conflict with United Air Lines, Inc. v. McDonald, 432 U.S. 385 (1977) and no conflict between Circuits. The District and Appellate court decisions reflect sound judgment based on the law and facts of the case. The seniority issue contested by Petitioners is moot.

Petitioners complain about the 1976 changes in the seniority system. The first change, on June 15, 1976, resulted from the implementation of the Decree. This change created a formula which treats class members differently from non-class members. The second change, effective on September 29, 1976, was collectively bargained for by "CPI" and the "Council". It is incorporated in the 1976 Collective Bargaining Agreement. This system, in effect today, treats all workers exactly the same. For all workers,

seniority is measured by the date when a person first achieved seniority whether seasonal or permanent (C.T. 1282).

If this Court reverses the lower courts and permits intervention, then it will mandate a useless act. The District Court has no jurisdiction in the context of this fairness hearing to undo the collectively-bargained-for seniority system now in effect. Even if the District Court struck this system from the Decree, it would continue to control the industry, since the Collective Bargaining Agreement governs except where there is a conflict between it and the Decree. The seniority system would remain since the Decree only supplements the Collective Bargaining Agreement.[1] The Consent Decree originally provided for a formula seniority which was replaced

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[1] Article XVA. of the Decree states:

The provisions of the Collective Bargaining Agreement between the parties shall remain in full force and effect during the term of this Settlement Agreement, except to the extent that such provisions conflict with the provisions of this Settlement Agreement shall prevail.

by the collective bargaining adoption of a unitary seniority system. Therefore, elimination of the Consent Decree would not change the seniority system now in effect. This seniority is without doubt a bona fide seniority system under International Brotherhood of Teamsters v. United States, 431 U.S. 349 (1977).

This fact is fatal to Petitioner's attempt to involve this Court in essentially, a moot controversy. Petitioners' arena of redress is participation in the future collective bargaining agreement negotiations or, alternatively, they may file their own lawsuit claiming that the seniority change in 1976 violated their rights. The remedy they seek simply does not exist in the context of this fairness hearing on the Consent Decree.

B. THERE IS NO CONFLICT BETWEEN THE CIRCUITS AS TO POST-JUDGMENT INTERVENTION IN TITLE VII ACTIONS.

The Petitioners allege that this case and Stallworth v. Monsanto Co., 558 F.2d 257 (5th Cir. 1977) conflict. The

applicable legal standards used by both courts and their respective facts demonstrate harmony, not discord.

Both courts enumerate relevant factors in evaluating an intervenor's timeliness. The Fifth Circuit's Factor 1 (concerning length of time before filing intervenor knew or should have known of his interest) and Factor 4 (unusual circumstances) are virtually the same as the Ninth Circuit's Factor 1 (stage of the proceeding) and Factor 3 (reason for and length of delay). Both circuits cite, as additional factors, prejudice to the parties.

The two cases' facts are strikingly different. The factual difference explains the differing results. In Stallworth, only several weeks passed between signing of the Agreement and the holding of an evidentiary fairness-hearing. There was no individual notice to one hundred fifty thousand workers, nor posted notice, nor published notice. There was no evidence in Stallworth that newspapers carried published accounts of the

settlement. Moreover, the unusual fact which "tilt[ed] the scales", 558 F.2d at 267, in Stallworth, Plaintiffs' opposition to notifying non-class member workers, is non-existent herein. Plaintiffs' counsel, in fact, participated in numerous public meetings to discuss the Decree (C.T. 141) with both class and non-class members.

C. THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH UNITED AIR LINES V. MCDONALD.

United Air Lines, Inc. v. McDonald, 432 U.S. 385 (1977) involved a motion to intervene after judgment to appeal the denial of class certification. Intervenors in that case were not attempting to relitigate issues. They were attempting to appeal issues already decided. This Court's ruling in McDonald was buttressed by many lower court decisions in areas other than Title VII which approved intervention after judgment for purposes of appeal, see Fn. 16.

The crucial distinction between McDonald and the instant case is that

Petitioners seek to relitigate matters that were thoroughly argued by the parties and pre-decree intervenors in the fairness hearing. Unlike McDonald, where no prejudice would result to United Air Lines by an intervenor class member doing exactly what the class representative could do, in the case at bar, the prejudice to all the parties caused by Petitioners' late arrival was substantial. McDonald does not support Petitioners' claim.

D. THE DISTRICT COURT AND THE NINTH CIRCUIT COURT OF APPEALS DID NOT ERR IN DENYING THE INTERVENTION AS UNTIMELY.

The Petitioners herein ask this Court to defy common sense and hold that the Petitioners did not know or should not reasonably have known of this lawsuit. An ancillary argument is that they knew of the lawsuit, but did not know of its effect on them.

With regard to knowledge of the lawsuit, it is "hard to believe" (according to Judge Orrick who knew of the notoriety

of this case and witnessed the packed courtroom during the fairness hearing) (C.T. 1314) that cannery workers, who were also union members, did not know of a lawsuit. First, it had been reported in the press; second, notices had been sent to 150,000 class members, many of whom were Anglo women whose husbands worked in the canneries; third, notices had been posted in the canneries; fourth, public meetings had been held by Plaintiffs' counsel and by dissident class members (C.T. 141, 142).

Petitioners' complaint that they did not know how the decree would affect them is similarly meritless. First, the posted and published notice explained the formulaic changes in seniority (C.T. 555). The Ninth Circuit, by implication, found the notice was adequate. Second, Petitioners' claim of "deceit" by the union can hardly stand scrutiny in light of the notice, the public meetings, and the six days of courtroom hearings. Third, knowing of the settlement and that seniority was affected, Petitioners

accepted the risks of not intervening at some time before judgment. Finally, the September 29, 1976 change in seniority was known throughout the industry since the union membership, in July 1976, approved the new Collective Bargaining Agreement containing the specific seniority change.

The reality of this situation as correctly perceived by the lower courts is that Petitioners knew of the lawsuit and the settlement and knew seniority would be affected. Only when the seniority lists were actually changed pursuant to the Decree, did they act. Under these circumstances, and in view of the membership's ratification of the current seniority system, the Petitioners simply were untimely in their attempt to undo an important, long-negotiated and litigated Consent Decree.

E. THE RECORD ESTABLISHED BY THE PARTIES SUPPORTS THE CONSENT DECREE.

Although Petitioners argue that there was no actionable discrimination

in the canneries, the record developed by the parties and pre-decree applicants for intervention established the factual basis for the District Court's approval of the Decree.[2] The Court stated in the opinion denying intervention to the Petitioners (Pet. for Cert. p. 73):

> It is not necessary to follow the A.T.& T. case here since the evidence adduced at the hearings provides ample support for a prima facie finding of discrimination sufficient to warrant the seniority adjustments and other affirmative relief in this case. The seniority adjustments including the modification calling for across-the-board plant seniority are designed

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[2] The position taken by the parties in opposition to the objections of the pre-decree applicants for intervention was never an indication that there was not actionable discrimination in the canneries (Pet. for Cert. p. 7, footnote 2). The purpose of those statements was to respond to arguments by the pre-decree applicants for intervention that the Consent Decree should not be approved; specifically, that the potential back pay liability of defendants was in the tens of millions of dollars.

to aid those who have been the victims of past discrimination. The propriety of such affirmative relief to redress past discrimination is clear, even in an industry with many temporary employees. Patterson v. Newspaper & Mail Deliveries Union, 514 F.2d 767 (2nd Cir. 1975).

Petitioners' contention that there was no actionable sex, race or national origin discrimination undermines their timeliness argument. The public meetings, the publicity, and the notice, apprised Petitioners, at least, of a discrimination lawsuit and a potential settlement. Surely, if they believed that there was no actionable discrimination in the canning industry, they had an obligation to act promptly, as did the pre-decree intervenors, especially in view of the well-publicized varieties of relief ultimately entered in the Decree.

VII
CONCLUSION

WHEREFORE, Plaintiffs-Respondents request this Court to deny the Petition for Writ of Certiorari and allow a well-functioning Consent Decree to continue to further equal employment opportunity in the canneries of Northern California

DATED: August 9, 1978

Respectfully submitted,

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